

§210.59

§210.66(a). Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint.

§210.59 Responses to the motion and the complaint.

(a) Any party may file a response to a motion for temporary relief. Unless otherwise ordered by the administrative law judge, a response to a motion for temporary relief in an ordinary investigation must be filed not later than 10 days after service of the motion by the Commission. In a “more complicated” investigation, the response shall be due within 20 days after such service, unless otherwise ordered by the presiding administrative law judge.

(b) The response must comply with the requirements of §201.8 of this chapter, as well as §§210.4 and 210.5 of this part, and shall contain the following information:

(1) A statement that sets forth with particularity any objection to the motion for temporary relief;

(2) A statement of specific facts concerning the factors the U.S. Court of Appeals for the Federal Circuit would consider in determining whether to affirm lower court decisions granting or denying preliminary injunctions;

(3) A memorandum of points and authorities in support of the respondent’s response to the motion;

(4) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. Each response to the motion must address, to the extent possible, the complainant’s assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter-proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §201.8 of

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this chapter, §§210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under §210.34 of this part.

§210.60 Designating an investigation “more complicated” for the purpose of adjudicating a motion for temporary relief.

At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to §210.58, the Commission may designate the investigation “more complicated” pursuant to §210.22(c) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under §210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the investigation “more complicated” for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the FEDERAL REGISTER. As required by section 337(e)(2) of the Tariff Act of 1930, the notice shall state the reasons that the temporary relief phase of the investigation was designated “more complicated.” The “more complicated” designation may be conferred by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown.

§210.61 Discovery and compulsory process.

The presiding administrative law judge shall set all discovery deadlines. The administrative law judge’s authority to compel discovery includes discovery relating to the following issues:

(a) Any matter relevant to the motion for temporary relief and the responses thereto, including the issues of bonding by the complainant; and

(b) The issues the Commission considers pursuant to sections 337 (e)(1),

(f)(1), and (j)(3) of the Tariff Act of 1930, viz.,

(1) The appropriate form of relief (notwithstanding the form requested in the motion for temporary relief),

(2) Whether the public interest precludes that form of relief, and

(3) The amount of the bond to be posted by the respondents to secure importations or sales of the subject imported merchandise while the temporary relief order is in effect. The administrative law judge may, but is not required to, make findings on the issues specified in sections 337 (e)(1), (f)(1), or (j)(3) of the Tariff Act of 1930. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to § 210.67(b).

§ 210.62 Evidentiary hearing.

An opportunity for a hearing in accordance with the Administrative Procedure Act and § 210.36 of this part will be provided in connection with every motion for temporary relief. If a hearing is conducted, the presiding administrative law judge may, but is not required to, take evidence concerning the issues of remedy, the public interest, and bonding by respondents under section 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

§ 210.63 Proposed findings and conclusions and briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, or briefs under § 210.40 concerning the issues involved in adjudication of the motion for temporary relief.

§ 210.64 Interlocutory appeals.

There will be no interlocutory appeals to the Commission under § 210.24 on any matter connected with a motion for temporary relief that is decided by an administrative law judge prior to the issuance of the initial de-

termination on the motion for temporary relief.

§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66(a), he shall also certify to the Commission the record upon which the initial determination is based.

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

(a) On or before the 70th day after publication of the notice of investigation in an ordinary investigation, or on or before the 120th day after such publication in a "more complicated" investigation, the administrative law judge will issue an initial determination concerning the issues listed in §§ 210.52 and 210.59. If the 70th day or the 120th day is a Saturday, Sunday, or Federal holiday, the initial determination must be received in the Office of the Secretary no later than 12:00 noon on the first business day after the 70-day or 120-day deadline. The initial determination may, but is not required to, address the issues of remedy, the public interest, and bonding by the respondents pursuant under sections 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

(b) If the initial determination on temporary relief is issued on the 70-day or 120-day deadline imposed in paragraph (a) of this section, the initial determination will become the Commission's determination 20 calendar days after issuance thereof in an ordinary case, and 30 calendar days after issuance in a "more complicated" investigation, unless the Commission modifies, reverses, or sets aside the initial determination in whole or part within that period. If the initial determination on temporary relief is issued before the 70-day or 120-day deadline imposed in paragraph (a) of this section, the Commission will add the extra time to the 20-day or 30-day deadline to which it would otherwise have been held. In computing the deadlines imposed by this paragraph, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the last day of the period is a Saturday,